

Tab 4

Dianne C. Ihling

August 12, 2005

New York, NY

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
MDL Docket No. 01Cv12257-PBS

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In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

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THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

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Friday, August 12, 2005

New York, New York

Time: 9:06 a.m.

Deposition of DIANNE C. IHLING, held at
the offices of Hogan & Hartson, LLP, 875 Third
Avenue, New York, New York, as taken before
Josephine H. Fassett, a Shorthand Reporter and
Notary Public of the State of New York.

Henderson Legal Services
(202) 220-4158

Dianne C. Ihling

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<p style="text-align: right;">78</p> <p>1 oncology generally were not serviced out of</p> <p>2 Institutional Operations?</p> <p>3 A That's correct.</p> <p>4 Q They were to some extent out of</p> <p>5 Contracts and Customer Administration but the</p> <p>6 contracts were not negotiated in that group, they</p> <p>7 were just administered in the sense of rebates</p> <p>8 were paid?</p> <p>9 A But they're -- the term rebate is</p> <p>10 incorrect. Again, this is an instance where</p> <p>11 office-based oncologists through, if they were</p> <p>12 organized under GPO, were receiving a contract</p> <p>13 price, not a rebate.</p> <p>14 Q Okay.</p> <p>15 A Okay?</p> <p>16 Q So then this group, the Contracts</p> <p>17 and Customer Administration, would not be involved</p> <p>18 in negotiating those contracts, correct?</p> <p>19 A No.</p> <p>20 Q Would any group under your</p> <p>21 responsibility be involved in that process?</p> <p>22 A Not that I can recall, I don't</p>	<p style="text-align: right;">80</p> <p>1 they would enter the terms of the contract so that</p> <p>2 the pricing terms, the contract price within the</p> <p>3 contract system and link appropriate GPO and GPO</p> <p>4 customers to that contract so that when that</p> <p>5 customer called up and ordered the product, they</p> <p>6 got it at a contract price. So this is very much</p> <p>7 an administrative function.</p> <p>8 Q I think I understand now. Thanks</p> <p>9 for that clarification.</p> <p>10 We had been talking about the</p> <p>11 different areas under your supervision and I</p> <p>12 think we just finished up with Institutional</p> <p>13 Operations and we were about to move to Pricing</p> <p>14 Support. Let's save that one for last because I</p> <p>15 have a lot of questions about that area which</p> <p>16 probably doesn't surprise you.</p> <p>17 A Okay.</p> <p>18 Q Let's move to Prime Vendor.</p> <p>19 A Okay. Prime Inventor Operations is</p> <p>20 my -- is the team that processed chargebacks from</p> <p>21 wholesalers and also reconciled the account</p> <p>22 basically with the wholesaler. Often times the</p>
<p style="text-align: right;">79</p> <p>1 believe so.</p> <p>2 Q And do you know who had that</p> <p>3 responsibility?</p> <p>4 A Christof Marre's group.</p> <p>5 Q Oncology marketing?</p> <p>6 A Oncology marketing.</p> <p>7 Q Okay. And then could you state --</p> <p>8 I'm sorry, you're going to have to repeat it</p> <p>9 because I didn't get it down. So then what role</p> <p>10 did Contracts and Customer Administration then</p> <p>11 have with respect to --</p> <p>12 A Contracts and Customer --</p> <p>13 Q -- GPOs -- let me finish my</p> <p>14 question.</p> <p>15 A Sorry.</p> <p>16 Q -- with respect to GPOs that are</p> <p>17 dealing with office-based oncologists?</p> <p>18 A Contracts and Customer</p> <p>19 Administration maintain the contract master file</p> <p>20 and the customer administration or the customer</p> <p>21 master file. So their relationship to GPO</p> <p>22 contracts with office-based oncologists was that</p>	<p style="text-align: right;">81</p> <p>1 chargeback transaction is not as clean as you</p> <p>2 might like it to be, so there were opportunities</p> <p>3 to reconcile.</p> <p>4 We also within the Prime Vendor</p> <p>5 Team had senior operations analysts who was</p> <p>6 responsible for using prime vendor data to do</p> <p>7 certain analyses about how a prime vendor was</p> <p>8 operating, how contracts and customer were</p> <p>9 operating, so really kind of more of a</p> <p>10 management tool for me to help understand how</p> <p>11 the group was working.</p> <p>12 And then the open position of</p> <p>13 Institutional Rebating, was later filled, was</p> <p>14 created because we had a number of individual</p> <p>15 hospital contracts that required a rebate to be</p> <p>16 paid after certain market factors were reviewed.</p> <p>17 Q Okay. So the prime vendor function</p> <p>18 is primarily an accounting processing function?</p> <p>19 A It's a processing function with some</p> <p>20 accounting.</p> <p>21 Q This area is not negotiating</p> <p>22 contracts with any --</p>

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<p style="text-align: right;">82</p> <p>1 A No, they're not. They're again 2 administering. 3 Q Okay. And the Contracts and 4 Customer Administration Group -- do you call these 5 groups or areas, did you have a specific name for 6 them? 7 A Groups are fine. 8 Q Groups. Okay. 9 So they maintain the contract 10 pricing file, correct? 11 A Yes, they did. 12 Q And what else did they do? 13 A And Customer and Contract 14 Administration they maintain the customer master 15 file. 16 Q Is that the list of customers and 17 addresses? 18 A That's customer name, address, ship 19 to location, et cetera. 20 Q And then the contract pricing files, 21 is that the right way to call it, did they also 22 maintain that?</p>	<p style="text-align: right;">84</p> <p>1 frequently asked to provide historical price 2 information on BMS products, the entire BMS 3 product line all label or codes and NDC codes. 4 And they distributed the internal price list and 5 responded to any pricing inquiries because they 6 were the team responsible for basically the 7 maintenance of the price master file. 8 Q And the price master file itself, is 9 it a big Excel spreadsheet? Do you know what 10 format it's in? 11 A It's a database. It's much like the 12 customer master and the prime vendor system, 13 they're all -- I believe they're COBALT databases 14 that reside on a mainframe computer. 15 Q Has it always been that way during 16 your tenure at BMS? 17 A During my tenure it was -- it was 18 that way before I left and it was that way after I 19 left or before I came and after I left. 20 Q When you were in this position, did 21 you participate in actually setting list prices? 22 A No.</p>
<p style="text-align: right;">83</p> <p>1 A They maintain the -- it has many 2 names, contract pricing file, bids and quotation 3 system, but basically the system that maintained 4 the contract, the essence of the contract with the 5 customer and the contract prices and 6 administrative fees, should there be any. 7 Q Okay. That brings us to Pricing 8 Support. 9 A Okay. 10 Q Let's go over that area. 11 A Okay. 12 Q What's your understanding of that 13 function? 14 A Okay. Denise and her team, which is 15 a team of one, Denise and Mimi Leake at the time, 16 were responsible for maintaining the BMS list 17 price system or the price master file. And Denise 18 had been responsible for that for a number of 19 years before I took over the group. And basically 20 whenever any pricing increase actions were taken, 21 Denise and her team were responsible for executing 22 the price increase action. They were also</p>	<p style="text-align: right;">85</p> <p>1 Q And does -- I'm talk to Ms. Kaszuba 2 about this, but do you know whether she has -- can 3 she update the list price master file from her 4 desk? Does she have a computer that she can do 5 that with? 6 A The list price master, I believe the 7 security features on the list price master were 8 that people could view that within my department, 9 they could look at the price master, but the 10 update capabilities were held within Denise's span 11 of control within her department. So the way that 12 we did things, and I'm sure that she would verify 13 this, was that one person would input the new 14 price and then the other person would release the 15 price, so they would do a double-check internal 16 control verification so the same person wasn't 17 updating and releasing. So control on that system 18 is fairly, fairly tight. 19 Q So Pricing Support was also 20 responsible for communicating list price changes 21 to people within BMS, correct? 22 A They were responsible for</p>

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<p>1 communicating changes in list price to BMS and 2 also to the data services and wholesalers, et 3 cetera.</p> <p>4 Q Let's take those one at a time. 5 So BMS, what kind of people would 6 receive communications of price increases? 7 A Internally? 8 Q Internally. 9 A I know that everyone in Pricing and 10 Reimbursement received that but I don't have a 11 clear recollection of -- okay, something just came 12 back to me.</p> <p>13 Folks within the order to cash 14 stream would have received that. So customer 15 service, customer financial services, probably 16 trade sales and operations and everyone in 17 pricing and reimbursement, but beyond that I 18 can't, I can't specifically recall the 19 distribution of the internal price list or the 20 notification -- 21 Q Sales force? 22 A Pardon?</p>	<p>1 e-mailing some customers because they had 2 requested an e-mail versus a fax, but I don't 3 recall exactly who those were or at what time that 4 may have occurred.</p> <p>5 Q Do you recall any use of Western 6 Union? 7 A Oh yes, yes. Sorry. Yeah, Western 8 Union. 9 Q I thought I saw that somewhere. 10 And then you also mentioned 11 publications. When you used the word 12 "publications," who were you referring to? 13 A Denise would send the price increase 14 information to FirstData Bank, Redbook and I 15 believe MediSpan was the third one. 16 Q Did you have any personal contact 17 with representatives of those three organizations? 18 A Not that I can recall. 19 Q Was Denise the primary point of 20 contact with those -- 21 A Yes, she was. 22 Q And then are you familiar with what</p>
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<p>1 Q What about the sales force? 2 A I'm not sure who in the sales force 3 received that information or if they did. 4 Q You mentioned wholesalers? 5 A Yes, wholesalers. 6 Q Which wholesalers? Give me 7 examples. 8 A The wholesalers -- I mean, we pretty 9 much worked with every wholesaler that was around 10 at the time. So we would send, Denise and Mimi 11 would send them documents indicating that a price 12 increase had been taken. And I think at the time 13 they were faxing it but they may have also sent an 14 e-mail, I'm not entirely sure. So McKesson, 15 Bergen, MeriSource, just the whole range of 16 wholesaler customers were notified of the change. 17 Q So examples of the communications 18 that you gave were two, e-mails and faxes? 19 A I believe. I know that they faxed 20 the documents and I believe at one time, it may 21 have been later than this presentation, I know 22 that -- well, I'm pretty sure that they started</p>	<p>1 the publications would then do with the list 2 prices? 3 A Could you be more specific? 4 Q When you reported the list prices 5 and the publishers then did something with them, 6 right? 7 A The publishers, I mean, we would 8 report the list price to the data services and 9 then they would publish their Average Wholesale 10 Price or AWP. 11 Q And do you know how they obtained 12 that AWP? 13 A To the best of my knowledge it's a 14 calculation that they performed. 15 Q And they apply a markup factor? 16 A I believe that it's called that. 17 Q And are you familiar with what the 18 markup factor was used by FirstData Bank? 19 A I believe that the market factor 20 used by FirstData Bank ranged between I think 20 21 percent and 25 percent. 22 Q And do you know what determined</p>

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<p>1 whether it was 20 or 25 percent?</p> <p>2 A No.</p> <p>3 Q How about for Redbook, are you</p> <p>4 familiar with the markup factor applied by</p> <p>5 Redbook?</p> <p>6 A I always assumed that it was the</p> <p>7 same but I don't know, I don't know specifically.</p> <p>8 Q Okay. And did you at any point in</p> <p>9 time in your responsibilities as Director of</p> <p>10 Pricing and Institutional Operations work with the</p> <p>11 publications on determining that markup factor?</p> <p>12 A No, never.</p> <p>13 Q How are AWP's used in the industry</p> <p>14 based on your experience?</p> <p>15 MR. EDWARDS: Object to the form.</p> <p>16 Used by who?</p> <p>17 MR. MATT: Just, you know,</p> <p>18 industry -- well, strike that, I'll be more</p> <p>19 specific.</p> <p>20 BY MR. MATT:</p> <p>21 Q Would you agree that during the time</p> <p>22 you were employed by BMS that governmental and</p>	<p>1 MR. MATT: I didn't finish it.</p> <p>2 BY MR. MATT:</p> <p>3 Q Are you aware that Medicare used it</p> <p>4 as a reimbursement benchmark in its formula</p> <p>5 reimbursing for Part B drugs?</p> <p>6 MR. EDWARDS: Objection.</p> <p>7 A I'm vaguely aware of that, I don't</p> <p>8 have specific knowledge of it.</p> <p>9 Q So you're more familiar with the use</p> <p>10 of AWP to have at the pharmacy level because of</p> <p>11 your prior experience working at CareMark or, I'm</p> <p>12 sorry, PCS?</p> <p>13 A I am more familiar with the</p> <p>14 reimbursement constructs of a large PBM.</p> <p>15 Q In your experience they were all</p> <p>16 based on AWP, correct?</p> <p>17 A To the best of my recollection.</p> <p>18 MR. EDWARDS: Objection. Note my</p> <p>19 objection.</p> <p>20 Go ahead.</p> <p>21 Q To the best of your recollection</p> <p>22 yes?</p>
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<p>1 private payers had adopted an industry practice of</p> <p>2 using AWP's as a benchmark for determining</p> <p>3 reimbursement rates?</p> <p>4 MR. EDWARDS: Object to the form.</p> <p>5 It assumes facts not in evidence.</p> <p>6 Go ahead.</p> <p>7 THE WITNESS: Go ahead?</p> <p>8 MR. EDWARDS: Yes.</p> <p>9 A Okay. During the time that I was</p> <p>10 employed by Bristol-Myers Squibb and prior to that</p> <p>11 the figure known as Average Wholesale Price was</p> <p>12 used as, to my knowledge, as a benchmark when</p> <p>13 reimbursing when -- sorry -- when people went to</p> <p>14 the pharmacy to buy their drug product.</p> <p>15 Q So you're familiar that Medicare</p> <p>16 used it as a reimbursement?</p> <p>17 A I don't have specific knowledge.</p> <p>18 MR. EDWARDS: Object.</p> <p>19 Let's hear the end of the</p> <p>20 question. You sort of mumbled at the end</p> <p>21 of your question and I want to make sure</p> <p>22 I understand the question.</p>	<p>1 A To the best of my recollection most</p> <p>2 pharmacy, most PBM formulas are an AWP-based</p> <p>3 formula.</p> <p>4 Q Did you or anyone under your</p> <p>5 supervision ever conduct a survey of wholesalers</p> <p>6 in order to determine whether the market factors</p> <p>7 applied by the publishers to the BMS list prices</p> <p>8 were accurate in that they reflected the real</p> <p>9 prices in the marketplace?</p> <p>10 MR. EDWARDS: Objection. Assumes</p> <p>11 facts not in evidence.</p> <p>12 Go ahead.</p> <p>13 A I don't believe so.</p> <p>14 Q You just don't recall whether that</p> <p>15 was ever done under your supervision?</p> <p>16 A I don't recall and I don't believe</p> <p>17 that -- I don't believe that was done by anyone in</p> <p>18 my department.</p> <p>19 Q Okay. Is there a particular reason</p> <p>20 why it was not done?</p> <p>21 A I don't -- I mean, the company</p> <p>22 doesn't set AWP so I --</p>

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<p style="text-align: right;">94</p> <p>1 Q You just don't know?</p> <p>2 A I'm sorry, I don't know.</p> <p>3 Q That's okay.</p> <p>4 Do wholesalers typically purchase</p> <p>5 drugs from BMS at Wholesale List Price less 1 or</p> <p>6 2 percent for a prompt pay discount?</p> <p>7 A Wholesalers generally purchase BMS</p> <p>8 product at Wholesale List Price and if they pay</p> <p>9 promptly they may receive a 1 to 2 percent prompt</p> <p>10 pay discount. They may earn that.</p> <p>11 Q Do they typically take advantage of</p> <p>12 that opportunity?</p> <p>13 A To the best of my recollection they</p> <p>14 typically do take advantage of that opportunity.</p> <p>15 Q And are you familiar with the</p> <p>16 margins that wholesalers typically make when they</p> <p>17 in turn sell a BMS drug?</p> <p>18 A No, I'm not.</p> <p>19 Q Not at all?</p> <p>20 A No.</p> <p>21 Q Do you think it's 20 or 25 percent?</p> <p>22 A I honestly don't know.</p>	<p style="text-align: right;">96</p> <p>1 A It's hard -- the most specific</p> <p>2 example that I can recall would be subsequent to a</p> <p>3 price increase we would receive information back</p> <p>4 from the data services and kind of spot check it</p> <p>5 to make sure that they had, they had received the</p> <p>6 price increase information.</p> <p>7 Q Okay. So when you say "spot check"</p> <p>8 I'm a little confused about what you would do.</p> <p>9 Let me break this down.</p> <p>10 So you would -- the Wholesale List</p> <p>11 Price goes to the publishers and then the</p> <p>12 publishers would apply a markup factor to</p> <p>13 determine AWP and then send that information</p> <p>14 back to Pricing Support, correct?</p> <p>15 A Yes.</p> <p>16 Q And then when you say "spot check,"</p> <p>17 could you be more specific about what spot</p> <p>18 checking means?</p> <p>19 A Well, I'm not, I can't speak for</p> <p>20 what Denise, for what Denise and her team did but</p> <p>21 they did have a methodology for reviewing and</p> <p>22 making sure that they had listed the list price</p>
<p style="text-align: right;">95</p> <p>1 Q Okay. How did BMS itself use AWP's</p> <p>2 in your area. Did you ever use it in any of your</p> <p>3 pricing activities in terms of analyzing AWP's of</p> <p>4 competitors for instance?</p> <p>5 MR. EDWARDS: Object to the form.</p> <p>6 MR. MATT: Strike that and let me</p> <p>7 start the question over again.</p> <p>8 BY MR. MATT:</p> <p>9 Q Let me ask a very general question.</p> <p>10 When you were Director of Pricing</p> <p>11 and Institutional Operations at BMS, did you</p> <p>12 work with AWP's at all?</p> <p>13 A In what context?</p> <p>14 Q Did you reference them in any</p> <p>15 context?</p> <p>16 A I don't believe that I personally</p> <p>17 referenced them.</p> <p>18 Q What about folks under your</p> <p>19 supervision?</p> <p>20 A Members of my staff may have worked</p> <p>21 with those numbers.</p> <p>22 Q And in what context?</p>	<p style="text-align: right;">97</p> <p>1 accurately, the Wholesale List Price.</p> <p>2 Q The Wholesale List Price that was</p> <p>3 actually transmitted to them?</p> <p>4 A Yes.</p> <p>5 Q Okay. At any time are you aware of</p> <p>6 BMS at the time you were Director of Pricing and</p> <p>7 Institutional Operations ever transmitting to the</p> <p>8 publications a specific markup factor for BMS</p> <p>9 products?</p> <p>10 A No, we did not do that.</p> <p>11 Q Okay. And are you aware of any</p> <p>12 instances in which folks in the Pricing Support</p> <p>13 group actually approved the AWP's that were</p> <p>14 reported by one of the publications?</p> <p>15 A We didn't approve. BMS's</p> <p>16 responsibility to price was to publish a Wholesale</p> <p>17 List Price. The data services publish and are</p> <p>18 responsible for what they call the Average</p> <p>19 Wholesale Price, we did not approve those numbers</p> <p>20 nor did we have input into them.</p> <p>21 Q Did people in Pricing Support ever</p> <p>22 sign price lists sent to them by publishers?</p>

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<p style="text-align: right;">122</p> <p>1 MR. MATT: I don't think they did.</p> <p>2 MR. EDWARDS: Okay.</p> <p>3 MR. MATT: That's why I wanted to</p> <p>4 read the Bates numbers in --</p> <p>5 MR. EDWARDS: Hence my objection.</p> <p>6 MR. MATT: -- separately so that</p> <p>7 it's clear on the record that we have</p> <p>8 probably four distinct documents. Back to</p> <p>9 the question.</p> <p>10 MR. EDWARDS: Let me just also note</p> <p>11 it appears that there's highlighting in at</p> <p>12 least one page of these documents and I</p> <p>13 sort of suspect it was not in the original.</p> <p>14 MR. MATT: Okay. So you're getting</p> <p>15 something like this? Oh, highlights</p> <p>16 showing through.</p> <p>17 MR. EDWARDS: Yeah, it's showing</p> <p>18 through on the copy.</p> <p>19 MR. MATT: We will substitute at</p> <p>20 some future time a clean copy.</p> <p>21 MR. EDWARDS: Great.</p> <p>22 MR. MATT: So that that does not</p>	<p style="text-align: right;">124</p> <p>1 specific detail, so. They look familiar.</p> <p>2 Q Let me point out a couple of</p> <p>3 sentences on one of them. Let's look at the one</p> <p>4 that has the Bates number beginning 00337310. It</p> <p>5 looks like this.</p> <p>6 A That's the fourth document.</p> <p>7 Q And on the second-to-last page.</p> <p>8 A Can I have the number, please?</p> <p>9 Q The number at the bottom is</p> <p>10 00337314.</p> <p>11 A Okay.</p> <p>12 Q Number 4 says Package Insert, and</p> <p>13 I'll just read it. It says, Redbook, FirstData</p> <p>14 Bank and MediSpan require package inserts along</p> <p>15 with prices to input in each national direct</p> <p>16 database. Pricing Support is responsible for</p> <p>17 providing product and pricing information to the</p> <p>18 three data services. If product is not added, the</p> <p>19 following occurs.</p> <p>20 Bullet point. It says, The AWP</p> <p>21 (Average Wholesale Price) is not established.</p> <p>22 And then in bold point, Reimbursement of drug</p>
<p style="text-align: right;">123</p> <p>1 show up. And off the record.</p> <p>2 (Whereupon, off the record.)</p> <p>3 (Whereupon, resumed.)</p> <p>4 MR. MATT: Back on the record.</p> <p>5 BY MR. MATT:</p> <p>6 Q Do you recognize any of these four</p> <p>7 documents?</p> <p>8 A These documents are vaguely familiar</p> <p>9 to me although not specifically familiar.</p> <p>10 Q Is one or more of these specific</p> <p>11 documents more recognizable than any of the</p> <p>12 others?</p> <p>13 A Based on my review just now they</p> <p>14 look like they're different iterations of the same</p> <p>15 document. Perhaps one being older than the other,</p> <p>16 one being more a draft than the other. And they</p> <p>17 appear to be policies and procedures used by the</p> <p>18 Pricing Support group.</p> <p>19 Q Which is a group under your</p> <p>20 supervision; is that correct?</p> <p>21 A Yes, that's correct. But it's been</p> <p>22 a very long time since I've had to review these in</p>	<p style="text-align: right;">125</p> <p>1 cost by insurance companies directly or through</p> <p>2 third-party payers is denied without product</p> <p>3 information and AWP.</p> <p>4 In your experience would you agree</p> <p>5 with that statement?</p> <p>6 A In my experience it's important for</p> <p>7 the data services when a new product is launched</p> <p>8 or a new package of a current formulation is</p> <p>9 launched that they receive information about the</p> <p>10 product, its packaging and the Wholesale List</p> <p>11 Price so that they can put that into their system.</p> <p>12 Without that the product would not, the data</p> <p>13 services would not transmit the information to</p> <p>14 their downline customers and they would not be</p> <p>15 aware that the product is available.</p> <p>16 Q Okay. And the next page, which is</p> <p>17 the last page of this document, it's Bates</p> <p>18 numbered 00337315. It's the highlighted</p> <p>19 paragraph. It says -- that's kind of like one of</p> <p>20 the last paragraphs, The purpose for this</p> <p>21 exception.</p> <p>22 A Okay.</p>